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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DAMON BENTLEY FRANKLIN,

12 Plaintiff,

13 v.

14 E. WEBB,

15 Defendant.
16

No. 2:23-CV-1140-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court are Defendant's second motion to compel Plaintiff's
19 attendance at his deposition, see ECF No. 36, and Defendant's motion to stay the case schedule
20 pending resolution of Defendant's second motion to compel, see ECF No. 37.

21 On October 25, 2024, Defendant filed a motion to compel Plaintiff's attendance at
22 his deposition. See ECF No. 30. The motion went unopposed, and on December 13, 2024, the
23 Court granted Defendant's motion. See ECF No. 33. The Court directed Plaintiff to appear at his
24 properly notice deposition within 60 days. See id. The Court extended the discovery cut-off date
25 to June 20, 2025, and further directed that dispositive motions be filed within 120 days thereafter.
26 See id. On February 11, 2025, the Court extended the deadline to take Plaintiff's deposition to
27 April 12, 2025. See ECF No. 35.

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1 In the currently pending second motion to compel, Defendant states that, when
2 Plaintiff recently appeared at his re-noticed deposition, he said that he wanted to dismiss the case
3 but has since refused to communicate with defense counsel regarding a stipulated voluntary
4 dismissal. See ECF No. 36. Defendant asks for a second court order compelling Plaintiff to
5 attend his deposition and warning Plaintiff that failure to do so may result in dismissal of the
6 action. See id. Defendant also seeks a stay of the currently case deadlines pending resolution of
7 this request. See ECF No. 37.

8 Defendant's second motion to compel is premature. The Court has set a deadline
9 of April 12, 2025, for Plaintiff to appear at his deposition. That date is still nearly a month away
10 and Defendant has ample time to re-notice Plaintiff's deposition. The Court will, however,
11 admonish Plaintiff once again that, should he fail to appear at his properly noticed deposition on
12 or before April 12, 2025, the Court will entertain a motion pursuant to Federal Rule of Civil
13 Procedure 37 for terminating sanctions. Defendant's second motion to compel will be denied.
14 Defendant's motion to stay the remaining case schedule pending resolution of Defendant's
15 second motion to compel will be denied as moot. Pursuant to the most recent scheduling order,
16 discovery closed on June 20, 2025, and dispositive motions are due within 120 days of that date.

17 Accordingly, IT IS HEREBY ORDERED as follows:

- 18 1. Defendant's second motion to compel, ECF No. 36, is DENIED as
19 premature.
- 20 2. Defendant's motion to stay the case schedule, ECF No. 37, is DENIED as
21 moot.

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23 Dated: March 17, 2025



24 DENNIS M. COTA
25 UNITED STATES MAGISTRATE JUDGE
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